

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL S. STANSALL,

Defendant.

4:14-CR-3039

ORDER

This matter is before the Court on the defendant's "Motion to Amend" ([filing 60](#)). That motion will be denied.

The defendant's motion is difficult to understand. He asks the Court to amend his "pending" [28 U.S.C. § 2255](#) motion—but, his previous § 2255 motion was denied on October 26, 2016. *See* [filing 58](#); [filing 59](#). So, there is no pending § 2255 motion to "amend." *Compare United States v. Sellner*, 773 F.3d 927, 931-32 (8th Cir. 2014). And the time to appeal that ruling has obviously passed, so the Court's judgment is final. *See* [Fed. R. App. P. 4\(a\)\(1\)\(B\)](#); *Jeffries v. United States*, 721 F.3d 1008, 1013 (8th Cir. 2013).

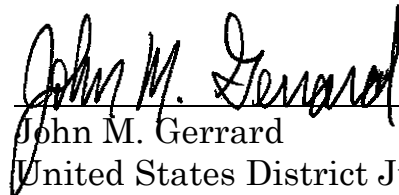
Because the defendant's previous § 2255 motion was denied on the merits, his present motion to amend can only be characterized as a second or successive § 2255 motion. *See Sellner*, 773 F.3d at 932 ("key factor in determining whether a petition should be considered 'second or successive' is whether a prior petition has been adjudicated on the merits"); *see also United States v. Lee*, 792 F.3d 1021, 1023-25 (8th Cir. 2015) (motion seeking relief from denial of § 2255 motion was second or successive application); *United States v. Lambros*, 404 F.3d 1034, 1036–37 (8th Cir. 2005) (same). Such a motion requires authorization by the Court of Appeals. *See* § 2255(h); [28](#)

U.S.C. § 2244(b)(3). The defendant has not obtained such authorization, so his "motion to amend" will be denied. See *United States v. Patton*, 309 F.3d 1093, 1094 (8th Cir. 2002); see also *United States v. Carranza*, 467 F. App'x 543 (8th Cir. 2012).

IT IS ORDERED that the defendant's "Motion to Amend" ([filing 60](#)) is denied.

Dated this 2nd day of January, 2018.

BY THE COURT:



John M. Gerrard
United States District Judge